

Report to the California Legislature on the Necessity of Certifying Physical Therapists to Perform Electromyography

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Introduction

This report was prepared to comply with the requirements of Section 2620.5(d) of the Business and Professions Code. This section was added to the code by Chapter 991, Statutes of 1998, as a result of the Sunset review of the Physical Therapy Board of California (Board) by the Legislature.

The new sub-section of the Business and Professions Code directed the Board to undertake a study assessing the need for, and potential alternatives to, the certification requirement for physical therapists to perform tissue penetration for the purpose of evaluating neuromuscular performance. This report contains the findings of the study.

History of Certification Requirement

The authority for a physical therapist to perform tissue penetration for the purpose of evaluating neuromuscular performance was added to the Physical Therapy Practice Act by Chapter 866, Statutes of 1977 (AB733). The legislation specifically included the requirement for certification to ensure public safety. The specific authority was added to ensure that physical therapists who had the proper training would be able to perform the procedure as part of their practice of physical therapy.

The regulations which were adopted based on the statutory authority provide for two distinct certifications, electroneuromyography and kinesiological electromyography. The regulatory definitions (Title 16, Division 13.2, Article 11, Section 1399.60) of each speciality are:

Electroneuromyography- The performance of tissue penetration for the purpose of evaluating neuromuscular performance, and includes the evaluation of specific abnormal potentials and evoked responses.

Kinesiological electromyography- The study, including tissue penetration, of the phasic activity of individual or multiple muscles in relation to another physical or physiological event or exercise and does not include the evaluation of specific abnormal potentials or evoked responses.

How Other States Regulate the Performance of Electromyography by Physical Therapists

The review of the laws of the other states determined that California is the only state that requires physical therapists to obtain an additional certification or licensure from the state to perform electromyography. All but a few states consider electromyography to be a part of the practice of physical therapy.

The Need for Certification of Physical Therapists to Perform Electromyography

The first issue that must be considered when determining the need for regulation of a profession is whether or not the practice of the profession represents a potential threat to the health and safety of the citizens of California. Since the performance of electromyography is part of the scope of practice of physical therapy, and the Legislature has determined the practice of physical therapy represents a potential for harm, there is a need for regulation of physical therapists who perform electromyography.

The next question is, what level of regulation is required? To answer this question the Board looked at the percentage of physical therapists who pass the examination on the first attempt, the number and types of complaints that have been filed, the number of physical therapists who maintain the certification, how many candidates apply for certification annually, and how many electromyography studies are being performed in California annually.

A total of 87 physical therapists have taken an examination to become certified to perform electromyography. The number who have passed the examination on the first attempt is 65 (75%). Five (6%) physical therapists have chosen not to retake the examination. The remaining 17 (19%) passed the examination on a subsequent attempt and became certified.

The Board identified three complaints regarding the performance of electromyography that have been filed against physical therapists. None of the complaints included allegations that a patient had been injured or that the physical therapist was negligent or incompetent. Two of these complaints were filed by physician and surgeons who alleged the report of findings that they received represented a diagnosis. The Board's investigation of these complaints determined that the report of findings did not include a diagnosis, and that the physical therapist had submitted the report to the physician and surgeon in order that a diagnosis could be made.

The third complaint alleged that the physical therapist manipulated the examination and data contained in the report of findings in order to provide a report that would support the position of an insurance company against the patient. When the Board investigated the complaint, the complainant would not cooperate and no evidence of wrong doing by the physical therapist could be found.

The Board also contacted McGinnis and Associates, the major provider of liability insurance for physical therapists in the United States to determine if there had been malpractice claims as a result of physical therapists performing electromyography. McGinnis and Associates could not find that a claim had ever been filed in California, or any other state, that involved an allegation of harm related to electromyography performed by a physical therapist.

Approximately 60 physical therapists hold current and valid certification. This represents 73% of the physical therapists who have ever been certified. An additional eight physical therapists have certifications that are not current, but could be renewed.

The number of physical therapists who seek certification varies from approximately zero to six per year.

The number of electromyography evaluations performed by physical therapists annually in California is difficult to determine since the Board is not authorized to collect such statistics. A survey of licensees indicated that an average number of studies performed by each of the 30 physical therapists certified to perform electroneuromyography each year is 800. This would represent 24,000 studies per year.

The survey of physical therapists certified to perform kinesiological electromyography indicated an average number of studies performed each year by each of the 30 physical therapists is 150. This represents a total of 4,500 studies annually.

Alternatives to Certification

The Board identified eight alternatives to the certification program as it exists today to study. The eight alternatives, and the pros and cons are:

(1) Increase the fees for renewal of electromyography certification to cover the cost of running the program

The certification structure that has existed for more than 20 years has worked well. However, the cost associated with maintaining valid examinations has presented a challenge. With the limited number of candidates (an average of two per year) the examination program has not been self supporting. The present examination fee of \$500 results in an average revenue of \$2000 per year. The renewal fees for certification of electromyography results in an additional revenue of approximately \$1,500 per year. This results in a total revenue of \$3,500 per year. The cost of conducting an examination workshop for each examination each year and administering the examinations is approximately \$5,000 per year. The result is that at least \$1,500 per year is absorbed by the licensing and renewal fees paid by physical therapists and physical therapist assistants.

Section 2689 of the Business and Professions Code provides for application and renewal fees of not more than \$200. Section 1399.54 of the Physical Therapy Regulations establish the actual and renewal fee at \$50. An adjustment of the renewal fee could result in the program being self supporting. An increase in the renewal fee from \$50 to \$175 for the two years of certification would result in additional revenue of approximately \$3,750 per year. The additional revenue would result in the program being self supporting when the costs of examination maintenance and administration, and the renewal process are considered. The Board prefers an adjustment in the renewal fee as opposed to an increase in the examination fee as it feels that an increased examination fee could result in a barrier to physical therapists becoming certified to perform electromyography.

This alternative will ensure that physical therapists have demonstrated their competency to perform electromyography prior to them performing the tests independently. The failure rate 25% on the first attempt at the examination documents the need for a measure of competency.

(2) Provide statutory authority for physical therapists to perform electromyography without a requirement for certification, but require that standards be met

This alternative would provide a standard that a physical therapist could use to determine if they were qualified to perform electromyography. The alternative would also provide the Board a clear standard to determine if the physical therapist was legally performing electromyography if a complaint was filed.

(3) Recognize a non Governmental Certification

The Board identified The American Board of Physical Therapy Specialties as the only entity that provides any type of certification to physical therapists who perform electromyography. The requirements to qualify for the certification represent advanced, not entry level knowledge, skills and abilities. It appears that only a few of the 30 physical therapists certified to perform electroneuromyography would qualify. No entity was found that provides certification for physical therapists who perform kinesiological electromyography.

(4) Provide Statutory Authority for Physical Therapists to Perform Electromyography Without a Requirement for Certification and Without a Requirement That Standards Be Met

This alternative would provide clear statutory authority that electromyography is included in the scope of practice of physical therapy. All physical therapists would then be able to perform electromyography if they have the knowledge, skills, and ability to perform it competently. This is the same standard that a physical therapist is held to when they perform any physical therapy procedure. The performance of any physical therapy procedure without the required knowledge, skills, and abilities is considered unprofessional conduct and is a violation of the Physical Therapy Practice Act.

(5) Provide Statutory Authority for Physical Therapists to Perform Electromyography While in an Institutional Setting

The review of this alternative disclosed that electroneuromyography is rarely performed in an institutional setting. The review also determined that kinesiological electromyography is not limited to the institutional setting.

(6) Provide Statutory Authority for Physical Therapists to Perform Electromyography after They Have Registered with the Board

A registration requirement would have little benefit since physical therapists are already licensed and therefore the Board has an address on file.

(7) Allow the Authority for Physical Therapists to Perform Electromyography to Sunset

This would end the ability of 60 physical therapists to continue to practice a part of physical therapy that they have devoted their career to, and is legal in all but a few states. The obtaining of the certification to perform electroneuromyography required extensive investment of time and resources. This alternative would also restrict the ability of over 28,000 California citizens to choose who performs an electromyography study since only a physician and surgeon could legally do the study in California. The elimination of competition in the marketplace of a professional who is competent to practice is contrary to the principal of regulating professions in the way that is the least restrictive and does not needlessly limit choice and competition.

(8) Allow the Authority for Physical Therapists to Perform Electromyography to Sunset, but Provide a Statutory Provision That Physical Therapists Who Held Certification Prior to December 31, 2000 to Continue to Perform Electromyography

This alternative would enable those individuals who have obtained certification to continue to practice their profession. This alternative would however eliminate the ability of those physical therapists who have been training in the field to become certified. This alternative would also have the same negative impact on choice and competition.

Position of Interested Individuals and Organizations

The task force received inquiries regarding the preparation of this report from physical therapists certified to perform electromyography, the California Chapter, American Physical Therapy Association (also had a representative on the task force) and the California Orthopaedic Association. The individuals who are certified to perform electromyography, the California Chapter, American Physical Therapy Association, and the California Orthopaedic Association believe that it is in the best interest of the public and the physical therapists who are certified to perform electromyography for the State to continue the certification program as it currently exists.

Recommendation

The Physical Therapy Board of California recommends that the California Legislature pass legislation deleting the Sunset date for certification of physical therapists to perform electromyography and the statutory requirement for this report. The specific revision would be:

2620.5. A physical therapist may, upon specified authorization of a physician and surgeon, perform tissue penetration for the purpose of evaluating neuromuscular performance as a part of the practice of physical therapy, as defined in Section 2620, provided the physical therapist is certified by the board to perform the tissue penetration and evaluation; and provided the physical therapist does not develop or make diagnostic or prognostic interpretations of the data obtained. The board, after meeting and conferring with the Division of Licensing of the Medical Board of California, shall:

(a) Adopt standards and procedures for tissue penetration for the purpose of evaluating neuromuscular performance by certified physical therapists.

(b) Establish standards for physical therapists to perform tissue penetration for the purpose of evaluating neuromuscular performance.

(c) Certify physical therapists meeting standards established by the board pursuant to this section.

~~(d) The Physical Therapy Board shall undertake a study assessing the need for, and potential alternatives to, the certification requirement provided for in subdivision (c) and report its findings to the Legislature on or before October 1, 1999.~~

~~(e) This section shall remain in effect until December 31, 2000, and as of that date is repealed unless a later enacted statute, which becomes effective on or before December 31, 2000, deletes or extends that date.~~

Rationale For Recommendation

The Board found that the performance of electromyography by certified physical therapists has not resulted in any injury to the public. Based on more than twenty years of safe practice it would appear the regulatory mechanism that is in place has worked well. Consequently, the Board could not identify any valid reason to end the ability of physical therapists who specialize in the practice of electromyography to perform the studies.

The continuation of the certification program for physical therapists performing electromyography will provide assurance to California citizens, and the physician and surgeons who refer their patients to physical therapist electromyographers, that the test will be performed competently. California will also continue to set a high standard which other states may wish to follow.

Expenses Associated with Administration and Maintenance of EMG Examinations

Workshop Expense Calculation

Four Subject Matter Experts, One Testing Validation Specialist (Psychometrician) & One Staff Person

Expense Item	Per Day	Number	Expense
Subject Matter Expert (SME) Time Per Diem	\$100/ Day x 2 Days	4 SME	\$400
Subject Matter, Psychometrician & Staff Expert Travel Per Diem	\$120/ Day x 2 Days	3 SME 1 Psychometrician 1 Staff	\$360 240 240
Travel Expense	\$125	3 SME 1 Psychometrician 1 Staff	375 125 125
Meeting Room	\$300	2 Days	600
Total Per Workshop			\$2,465
Times Two Workshops (ENMG & KEMG)			\$4,930
Administration Expense	\$100 Proctor \$200 Exam Booklets		100 200
Total			\$5,230

The costs assume that at least one person would not incur travel related expenses